

THE CONSTITUTION OF

HUNTER COUNCILS INC

AS ADOPTED BY SPECIAL RESOLUTION OF THE BOARD
18 NOVEMBER 2010

1. Definitions

(1) In this constitution:

Director-General means the Director-General of the Department of Fair Trading (Services, Technology and Administration)

members means those local government entities within New South Wales admitted to membership of the organisation.

special general meeting means a general meeting of the association other than an annual general meeting.

the Association means Hunter Councils Incorporated.

the Act means the *Associations Incorporation Act 2009*.

the Board means the Committee of the association.

the Organisation means the staff, activities, resources and assets operated by the Association.

the Regulation means the *Associations Incorporation Regulation 2010*.

(2) In this constitution:

(a) a reference to a function includes a reference to a power, authority and duty, and

(b) a reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.

(3) The provisions of the Interpretation Act 1987 apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were an instrument made under the Act.

Part 2 – The Association

1. Name

- (1) The name of the Association is the **Hunter Councils Inc.**, hereunder referred to as '**The Association**'.

2. Mission

- (1) To be recognised as the 'Voice of the Hunter'.
- (2) To be recognised locally and nationally as the peak Hunter body that:
 - focuses and fosters cooperation, information and resource sharing,
 - improves the image of the Hunter Region and Local Government, and
 - effectively advocates on agreed regional positions and priorities.

3. Objectives

- (1) Cooperation, Information and Resource Sharing

To improve the quality and efficiency of Local Government service delivery throughout the Hunter Region and to maximize value to our respective communities.
- (2) Advocacy

To effectively represent the social, economic, cultural and environmental interests of Hunter Region communities.
- (3) Business Investment

To encourage and where possible, facilitate suitable business investment throughout the region.
- (4) Organisational Development

To ensure the Association develops as a highly credible and cost-effective organisation.

Part 3 – Membership

1. Membership

- (1) Full members

Membership of the Association shall be open to, but not restricted to, the following New South Wales local government entities:

Cessnock City Council
Dungog Shire Council
Gloucester Shire Council
Great Lakes Council
Lake Macquarie City Council
Maitland City Council
Muswellbrook Shire Council
Newcastle City Council
Port Stephens Council
Singleton Council
Upper Hunter Shire Council

- (2) Associate members (Non-voting)

By invitation of the Board of Hunter Councils, Associate Membership is available to associated organisations that have similar objectives to Hunter Councils. Such associate membership holds no voting rights and is valid for a period of up to three years after which a review is to be undertaken for any subsequent appointment.

2. Register of members

- (1) The Association will establish and maintain a register of members of the Association specifying the name and postal or residential address of each entity that is a member of the Association and each individual that is a member of the Executive.
- (2) The register of members and Executive will be kept in New South Wales at the main premises of the Association.
- (3) The register of members will be open for inspection, free of charge, to the Mayor or General Manager of any member council of the Association at any reasonable hour.
- (4) A copy of any part of the register will be made free of charge to the Mayor or General Manager of any member entity of the Association.

3. Fees and subscriptions

- (1) A member of the Association must, on admission to membership, pay to the association a fee determined by the Board.
- (2) In addition to any amount payable by the member under subclause (1) a member of the association must pay to the Association an annual membership fee determined by the Board.

4. Members' liabilities

- (1) The liability of a member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member in respect of membership of the Association as required by clause 3.

Part 4 – The Board and Board Executive

1. The Board

- (1) The committee of the Association shall collectively be known as 'the Board'.

Subject to the Act, the Regulation and this Constitution and to any resolution passed by the Association in general meeting, the role of the Board is to:

- (a) control and manage the affairs of the Association
- (b) exercise all such functions as may be exercised by the Association
- (c) perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the Association.

2. Representation

- (1) Each member Council will be entitled to one delegate on the Board

- (2) Each member Council's delegate will be the Mayor of the local government area
- (3) No alternate delegates are allowed.

3. Executive Positions

- (1) The Association shall elect a Chairperson and two (2) Vice chairpersons from its membership. Elections shall be conducted annually at the Annual General Meeting of the Organisation.
- (2) The Executive of the Organisation shall be the Chairperson and two (2) Vice Chairpersons.

4. Elections to the Executive

- (1) The Chairperson of the General Managers Advisory Committee shall be the Returning Officer for elections of the Executive.
- (2) A delegate may be nominated without notice for election as Chairperson or Vice Chairperson.
- (3) Nomination is to be made in writing by two or more delegates, one of whom may be the nominee. A nomination is not valid unless the nominee has indicated consent to the nomination in writing.
- (4) Nominations are to be delivered, sent or handed to the Returning Officer.
- (5) The Returning Officer is to announce the names of the nominees at the Annual General Meeting.
- (6) If only one delegate is nominated, that delegate is elected.
- (7) If more than one delegate is nominated, the Organisation is to resolve whether the election is to proceed by ordinary ballot or open voting.
- (8) In this clause, ballot means secret ballot and open voting means show of hands or similar means.

5. Role of the Executive

- (1) Between meetings of the Board the role of the Executive shall be to determine matters relevant to the Board's responsibility in circumstances where:
 - (a) In the opinion of the Executive the matter is such that it must be determined prior to the next ordinary meeting of the Board; and
 - (b) It would be impractical to convene an extraordinary meeting of the Board.
- (2) This role does not have the authority to vary the Organisation's adopted business plan and budget.

6. The Role of the Chairperson

- (1) The Chairperson, unless otherwise directed by resolution of the Organisation shall:
 - (a) Chair meetings of the Association
 - (b) Act as spokesperson for the Association in conjunction with the CEO
 - (c) Exercise leadership and give direction to the Association

- (d) Represent the Association to other Agencies and governments in conjunction with the CEO
- (e) Present the Association and its decisions in a positive way to the community, media, government and other interested groups
- (f) Together with the General Managers' Advisory Committee authorise the expenditure of funds provided provision has been made within the adopted budget; and
- (g) Call special meetings as required.

7. Role of the General Managers' Advisory Committee

- (1) The Organisation shall appoint a General Managers' Advisory Committee, comprising of the general manager of each member Council. One of the General Managers shall be appointed as Chairperson. The role of the Committee will be to:
 - (a) Act as a point of reference for the CEO in relation to the objectives, business and affairs of the organisation
 - (b) Provide advice and guidance to the Board
 - (c) Partner with the CEO in identification of issues and matters for referral to the Board
 - (d) Submit reports and recommendations to the Board for policy decisions
 - (e) Oversee and input to the preparation and adoption by the Board of annual business plan for the organisation
 - (f) Review advice from Hunter Councils Environment Technical Committees including:
 - The acceptance of grant funds
 - The approval of expenditure of resources including engagement of consultants and appointment of staff
 - (g) Review proposed projects and approve budget and resource allocation.

8. Role of CEO

- (1) The CEO shall:
 - (a) Be responsible for the day to day management of the Organisation;
 - (b) Exercise such of the functions of the Organisation as are delegated by the Board to the CEO;
 - (c) Appoint staff in accordance with the business plan and budget adopted by the Board and projects accepted by GMAC
 - (d) Direct and dismiss staff
 - (e) Act on the resolutions and directions of the Board and/or GMAC; and
 - (f) In conjunction with the Chairperson, act as spokesperson for the Organisation.

9. Casual vacancies in the Executive

- (1) In the event of a casual vacancy occurring in the Executive of the Board, the Board may appoint a member of the Board to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next following the date of the appointment.
- (2) A casual vacancy in the office of a member of the Executive occurs if the member:
 - (a) dies, or
 - (b) ceases to be a delegate to the association (in accordance with Section 2 (2), or
 - (c) becomes an insolvent under administration within the meaning of the Corporations Act 2001 of the Commonwealth, or
 - (d) resigns office by notice in writing, or
 - (e) is removed from office, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted of an offence involving fraud or dishonesty for which the maximum penalty on conviction is imprisonment for not less than 3 months, or
 - (h) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act 2001 of the Commonwealth.

Part 5 – Dispute Resolution

1. Dispute resolution between members of the Board

- (1) A dispute between a member and another member of the Board (in their capacity as members) of the Board, or a dispute between a member or members of the Board and the Association, are to be referred for mediation
- (2) If a dispute is not resolved by mediation within 3 months of the referral, the dispute is to be referred to arbitration.
- (3) The Commercial Arbitration Act 1984 applies to any such dispute referred to arbitration.

2. Disciplining of Board members

- (1) A complaint may be made to the Board by any person that a member of the Board:
 - (a) has refused or neglected to comply with a provision or provisions of this Constitution, or
 - (b) has wilfully acted in a manner prejudicial to the interests of the Association.
- (2) The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Board decides to deal with the complaint, the Board:
 - (a) must cause notice of the complaint to be served on the member concerned, and
 - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the committee in connection with the complaint, and

- (c) must take into consideration any submissions made by the member in connection with the complaint.
- (4) The Board may, by resolution, suspend the member from the Board if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved and the suspension is warranted in the circumstances.
- (5) If the Board suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the Board member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 3.
- (6) The suspension does not take effect:
 - (a) until the expiration of the period within which the Board member is entitled to appeal against the resolution concerned, or
 - (b) if within that period the Board member exercises the right of appeal, unless and until the Board confirms the resolution under subclause 3 (3), whichever is the later.

3. Right of appeal of disciplined Board member

- (1) A Board member may appeal to the Board in a general meeting against a resolution of the Board under subclause 2 (4) within 7 days after notice of the resolution is served on the member, by lodging with the public officer a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under subclause (1), the public officer must notify the Board which is to convene a general meeting to be held within 28 days after the date on which the public officer received the notice.
- (4) At a general meeting of the Board convened under subclause 3 (3):
 - (a) no business other than the question of the appeal is to be transacted
 - (b) the Board and the Board member must be given the opportunity to state their respective cases orally or in writing, or both
 - (c) the Board members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked
 - (5) The appeal is to be determined by a simple majority of votes cast by members of the Board.

Part 6 - Meetings of the Board

1. Meeting Frequency

- (1) The Board of the Organisation will meet six times per year to consider policy and major issues. Dates for the meetings will be decided at the Annual General Meeting for the following twelve months.

2. Calling of and attendance at meetings

- (1) Each member Council and delegates shall be notified of meetings not less than seven days before each meeting. In the case of Special Meetings, 48 hours notice shall be given.
- (2) The Chairperson will preside at all meetings of the Organisation or, in the absence of the Chairperson, the Vice Chairperson. In the absence of the Chairperson and Vice Chairperson, the delegates present at a meeting shall elect one of their members to preside.
- (3) A Councillor of a member Council not being a delegate may attend and speak at meetings of the Organisation by prior arrangement. Any senior officer of a Council which is a member may also attend and speak at meetings of the Organisation with the consent of the meeting.
- (4) A **special general meeting** of the Organisation may be called by:
 - (a) The chairperson
 - (b) Notice signed by three delegates or any member council.

3. Annual General Meetings – calling of and business at

- (1) The **annual general meeting** of the Organisation is to be convened in November of each year.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following to:
 - (a) Confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting
 - (b) Receive from the Chairperson a report on the activities of the Organisation during the last preceding financial year
 - (c) Elect office-bearers of the Organisation and members of any committee
 - (d) Receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as such in the notice convening it.

4. Notice of a special general meeting

- (1) Except if the nature of the business proposed to be dealt with at a special general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a special general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the special general meeting, cause notice to be given to each member specifying, in addition to the matter required under subclause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a special general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause **5 3 (2)**

- (4) A member desiring to bring any business before a special general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting given after receipt of the notice from the member.

5. Presiding member

- (1) The chairperson or, in the chairperson's absence, a vice-chairperson, is to preside as chairperson at each general meeting of the association
- (2) If the chairperson or, in the chairperson's absence, a vice-chairperson is absent or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

6. Adjournment

- (1) The chairperson of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

7. Making of decisions

- (1) A question arising at a general meeting of the association is to be determined by either:
 - (a) a show of hands, or
 - (b) if on the motion of the chairperson or if 5 or more members present at the meeting decide that the question should be determined by a written ballot—a written ballot.
- (2) If the question is to be determined by a show of hands, a declaration by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.
- (3) If the question is to be determined by a written ballot, the ballot is to be conducted in accordance with the directions of the chairperson.

8. Special resolutions

- (1) A special resolution may only be passed by the association in accordance with section 39 of the Act.

9. Voting

- (1) At meetings of the Board each delegate shall be entitled to vote.

10. Proxy votes not permitted

- (1) Proxy voting must not be undertaken at or in respect of a general meeting.

11. Postal ballots

- (1) The association may hold a postal ballot to determine any issue or proposal (other than an appeal under Part 5 of this Constitution).
- (2) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

12. Business at Meetings

- (1) Business conducted at a meeting of the Organisation shall consist of:
 - (a) Matters of which due notice has been given
 - (b) Matters raised by any member council through their delegates or General Manager and voted on by delegates to enable the business to be brought forward
 - (c) Matters which the Chairperson determines to be of urgency of which due notice has not been given and voted on by delegates to enable business to be brought forward, and
 - (d) Consideration of recommendations, reports and correspondence which are consistent with the objectives of the Organisation.

13. Quorum

- (1) A quorum at a meeting of the Organisation shall consist of a number being half the number of delegates entitled to vote, plus one.
- (2) A quorum of a sub-committee of the Organisation shall be a majority of members appointed.

14. Procedure

- (1) The procedure at a meeting of the Organisation shall be in conformity as far as possible with the procedure for meetings of Council and committees as prescribed by regulations made under the Local Government Act, 1993, as amended, and in accordance with any standing orders adopted by the Organisation which are not in conflict with the above.

Part 7 – The Powers of the Organisation

1. Powers of the Organisation

- (1) The Organisation shall, for the mutual benefit of the areas of the member Councils, have power in accordance with this constitution, to:
 - (a) Make submissions to Governments and other agencies in respect of the areas of the member councils, consistent with the objectives of the Organisation and the adopted Business Plan.
 - (b) Carry out the objectives of the Organisation, and
 - (c) Receive funds in respect of:
 - Staffing of the Organisation;
 - Carrying out of projects or studies agreed by the Organisation; and
 - For any purpose that may be authorised by the Organisation.

The above shall not affect the right of an individual Council acting in its own right on any matter.
- (2) By resolution, and within limits defined in such resolution, to authorise the Executive, a member Councils' representative, a staff member or a properly appointed sub-committee consisting in either whole or in part of delegates, staff or other persons to exercise or

perform on behalf of the Organisation any power, authority, duty or function other than any power, authority, duty or function, the Organisation, by resolution, reserves for itself.

- (3) The control regulation, maintenance and management of the exercise of these powers is vested in the meeting of the Board in accordance with this Constitution subject to any delegation of authority which may have been granted.

Part 8 – General

1. Staff and Services

- (1) The Organisation shall have the power to appoint any such staff as the Organisation may require from time to time or to secure from any other person, organisation or entity, such services as the Organisation may require from time to time.

2. Advisory Sub-committees

- (1) The Board will form three standing policy and strategy advisory committees to advise the Board on issues and trends relevant to each committee's purpose
- (2) The policy and strategy advisory committees will comprise (a) Environment, (b) Economic Development and Infrastructure and (c) Community and Cultural
- (3) Membership of the policy and strategy advisory committees will be limited to one (1) councillor from each member Council. This councillor may not be the Mayor
- (4) The policy and strategy advisory committees will meet five (5) times per year in the month between the bimonthly Board Meetings
- (5) The policy and strategy advisory committees will be chaired by a councillor elected by the committee's members
- (6) The CEO or the CEO's nominated staff delegate will act as Executive Officer for each of the policy and strategy advisory committees
- (7) The Board may, from time to time, appoint any number of additional committees in connection with any work, activity or object of the Organisation.
- (8) The Board shall have power to co-opt any person to assist and/or comprise a sub-committee
- (9) No committee of the Board has decision-making powers delegated by it to the Board. The agenda and minutes of all committee meetings are to be provided to the CEO for tabling in the next available Board Meeting agenda.

3. Office

- (1) The office of the Organisation shall be at such place as the Organisation may, from time to time, appoint.

4. Financial year

- (1) The Organisation's financial year shall commence on 1 July and terminate on 30 June.

5. Finance

- (1) The Organisation shall determine, prior to the May Board Meeting each year, an Annual Budget which will include:
 - The amount of proposed revenue and expenditure by the Organisation;

- The amount in hand available for such expenditure; and
 - Any additional amount required to be raised to meet such expenditure
- (2) In the event of any expenditure not covered by the Annual Budget, the Organisation shall prepare a statement showing:
- The amount and nature of the extraordinary expenditure;
 - The amount in hand available to meet the expenditure after allowing for estimated ordinary expenditure for the balance of the year; and
 - Any additional amount required to be raised to meet the extraordinary expenditure;
- and that this expenditure shall be considered by a meeting of the Organisation.
- (3) The Organisation shall levy each member Council on a basis agreed by all member Councils, the member's proportion of the amount required to meet the expenditure referred to in this Clause. The member's contribution shall be determined by resolution of the Organisation at the time of adopting the annual budget.
- (4) The Organisation has the power to request an individual one off payment on a fee for service basis from Councils wishing to participate in projects in the Business Plan.
- (5) The Organisation has the power to seek funding to undertake projects either for research purposes or for the development of business units.
- (6) The Organisation shall pay all moneys received by it to a bank account held in the name of the Organisation and shall use such moneys for the purpose of, and subject to, the terms of this Constitution.
- (7) All accounts shall be operated in such manner and by such persons as the Organisation shall from time to time determine.
- (8) The accounts of the Organisation shall be kept according to the same principles as the accounts of member Councils and in such books and form as are approved by the auditors of the Organisation.

6. Auditor

- 1) The Organisation shall appoint an auditor who shall annually audit the accounts of the Organisation. The appointment shall be for a period of three years.
- 2) The audited accounts shall be presented to a meeting of the Organisation prior to 30 November each year.

7. Annual Statement

- (1) The Organisation shall submit an Annual Statement to each of the member Councils with the notice of the Annual General Meeting.

8. Co-operation

- (1) For the purpose of performing any powers, duties or functions, the Organisation may make use of the services of an employee of a member Council if the prior approval of the Council is obtained.

9. Seal

- (1) There shall be a Seal of the Organisation which shall be kept in the custody of the Chief Executive Officer at the Office of the Organisation under lock and key. A register of use of the seal shall be maintained. It shall be used only by the authority of the Organisation.

10. Insurance

- (1) The Organisation shall effect and maintain insurance pursuant to relevant requirements of the Act.

11. Termination of Council Membership

- (1) A Council may withdraw from membership of the Organisation on giving twelve month's notice of termination to the Organisation. When such termination takes effect, no contribution shall be refunded, no funds will be distributed, and the Constitution remains in force between the remaining members of the Organisation.

12. Amendments

- (1) This Constitution may be altered from time to time by a resolution passed at a meeting of the Organisation by votes equivalent to three fourths the number of members entitled to vote, provided that the majority of member Councils are represented by at least one delegate.

13. Termination of Organisation

- (1) Upon the termination of this Organisation the debts and liabilities of the Organisation shall be discharged out of the assets of the Organisation. The balance of the assets shall be given or transferred in shares relative to the contribution by each member Council to the member Councils remaining immediately before the termination of the Constitution.

Appendix 1 Application for membership of association

(Clause 3 (1))

APPLICATION FOR MEMBERSHIP OF ASSOCIATION

Hunter Councils Incorporated

.....

Incorporated (incorporated under the *Associations Incorporation Act 2009*)

I,

[full name of applicant]

of

[address]

.....

[occupation]

hereby apply to become a member of the abovenamed incorporated association. In the event of my admission as a member, I agree to be bound by the constitution of the association for the time being in force.

.....

Signature of applicant

Date

I,

[full name]

a member of the association, nominate the applicant for membership of the association.

.....

Signature of proposer

Date

I,

[full name]

a member of the association, second the nomination of the applicant for membership of the association.

.....

Signature of seconder

Date